

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CHARLES L. BROCK as Personal Representative of the Estate of BESSIE A. BROCK,  
Deceased,**

**Appellant,**

**v.**

**LAWRENCE McCLURE, et al.,**

**Respondents.**

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DOCKET NUMBER WD75659

**Date: July 30, 2013**

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Appeal from:  
Boone County Circuit Court  
The Honorable Kevin M.J. Crane, Judge

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Appellate Judges:  
Division Four: James E. Welsh, C.J., Alok Ahuja, J. and Jack R. Grate, Sp. J.

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Attorneys:  
Gerald P. Greiman, St. Louis, MO and Keith A. Wenzel, Jefferson City, MO, for appellant.  
Kenneth S. Clay, for respondent.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**CHARLES L. BROCK as Personal Representative of the Estate of BESSIE A. BROCK, Deceased**

**Appellant,**

**v.**

**LAWRENCE McCLURE, et al.,**

**Respondents.**

**WD75659**

**Boone County**

Charles Brock, as personal representative of the Estate of Bessie A. Brock, asserted claims against Lawrence McClure, trustee of the Les Galey Trust, and against his mother Jean McClure, alleging fraud and misappropriation of trust assets. Although Lawrence McClure was the Trust's named trustee, the Petition alleged that Jean McClure had represented to Bessie Brock that she was authorized to act as Trustee on Lawrence McClure's behalf, and that by virtue of those representations Jean McClure assumed fiduciary obligations to Bessie Brock. The Petition also alleged that Ms. McClure and her son were "acting both individually and in concert" to take Trust funds.

Lawrence McClure's Answer to the petition was stricken. After striking Lawrence McClure's Answer, the circuit court held a hearing as to Mr. Brock's claims against him on September 28, 2009. At the conclusion of the hearing, the circuit court found in favor of Mr. Brock. On April 19, 2010, the circuit court adopted Mr. Brock's proposed Findings of Fact and Conclusions of Law, and entered judgment against Lawrence McClure for \$458,632.50 in damages, \$15,395.00 in attorney's fees, and \$4,000.00 in costs. The claims against Ms. McClure remained pending.

Ms. McClure later filed a motion for judgment as a matter of law, arguing that the claims asserted against her were inconsistent with the Findings of Fact Mr. Brock had proposed, and the court had entered, against Lawrence McClure. Specifically, Ms. McClure relied on the finding that "Lawrence McClure was the named Trustee and remained the only Trustee for the Les Galey Trust from September 9, 1992 until present," and the finding that "Lawrence McClure did not ever make any distributions for the benefit of . . . any of the named beneficiaries of the Trust." (Both Jean McClure and Bessie Brock were named beneficiaries of the Trust.)

The circuit court granted Ms. McClure's motion for judgment as a matter of law. Mr. Brock appeals.

## **REVERSED AND REMANDED**

### **DIVISION FOUR HOLDS:**

Ms. McClure's motion for judgment apparently relies on the theories of judicial estoppel and judicial admissions. Under either theory, for Ms. McClure to be entitled to judgment, the findings of fact entered with respect to Mr. Brock's claims against Lawrence McClure must have been clearly and unambiguously inconsistent with Mr. Brock's continued assertion of claims against Ms. McClure.

There is no necessary inconsistency between the findings of fact Mr. Brock proposed on his claims against Lawrence McClure, and his remaining claims against Ms. McClure.

The finding that Lawrence McClure was the Trust's sole named, *de jure* trustee, does not necessarily defeat Mr. Brock's claim that Ms. McClure represented that she was authorized to act on Lawrence McClure's behalf, and thereby assumed fiduciary duties toward Bessie Brock. In addition, the petition also alleged that Ms. McClure acted "in concert" with her son to misappropriate Trust funds. On a civil conspiracy claim, a co-conspirator need not personally perform the unlawful acts which further the conspiracy's objectives. Therefore, the fact that Ms. McClure was not a named trustee of the Trust, and that only Lawrence McClure may have been authorized to take various actions, does not necessarily defeat Mr. Brock's claim that Ms. McClure conspired with Lawrence McClure to misappropriate Trust funds.

Likewise, the finding that Lawrence McClure never made any distributions for the benefit of the Trust's named beneficiaries does not prevent a finding of liability against Ms. McClure. In context, this finding was part of the calculation of the trust assets owing to Bessie Brock. Because their rights to Trust assets were of equal priority, any distributions to Ms. McClure could not diminish the monies owing to Ms. Brock; whether or not Ms. McClure had received distributions of Trust assets was therefore irrelevant to Mr. Brock's claims against Lawrence McClure. Moreover, the finding plainly used the term "distributions" to refer to payments of Trust assets authorized by, and in accordance with, the terms of the Trust. This does not necessarily foreclose the possibility that Ms. McClure improperly received Trust assets, either directly or indirectly through Lawrence McClure or others.

Ms. McClure also argues that we can affirm the trial court's judgment because Mr. Brock failed to identify probative evidence that she acted in concert with her son, or improperly received Trust assets. But Ms. McClure's motion sought judgment on only a single ground: that Mr. Brock was estopped from asserting any claim against her because of the findings entered against Lawrence McClure. Because of the limited basis for Ms. McClure's motion, Mr. Brock was not required to marshal his evidence that Ms. McClure engaged in misconduct, or ultimately benefited from the misappropriation of Trust assets.

Before: Division Four: James E. Welsh, C.J., Alok Ahuja, J. and Jack R. Grate, Sp. J.

Opinion by: Alok Ahuja, Judge

**July 30, 2013**

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